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USTR FOR BARBARA WEISEL, JONATHAN MCHALE  
COMMERCE FOR JEAN KELLY, JULIET BENDER, JEREMY MARCUS  
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SUBJECT: THAILAND'S DEAL OF THE CENTURY: TEMASEK BUYS OUT  
PM'S SHIN CORP

REF: A. 04 BANGKOK 6901

[1](#)B. 04 BANGKOK 7124

[1](#)C. 05 BANGKOK 115

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[1](#)1. (U) SUMMARY: On January 23, 2006, Singapore,s Temasek Holdings announced the largest corporate takeover in Thailand,s history: the 73.3 billion baht (USD 3 billion) purchase of the 49.6 percent stake in Thailand,s Shin Corp Plc (Shin) held by members of Prime Minister Thaksin Shinawatra,s family. Structured through newly-created holding companies to get around Thailand,s restrictions on foreign ownership of telecommunications companies in a manner similar to Telenor,s buyout of Total Access Communications (TAC) and United Communications (UCOM) in October 2005, the Temasek takeover of Shin gives the investment arm of the Government of Singapore effective control of Thailand,s leading mobile phone operator, Advanced Info Service Plc (AIS), and a substantial stake in both Shin Satellite Plc and Thai AirAsia, among other subsidiary companies. Shin Corp comprises about 2.5 percent of the total capitalization of the Stock Exchange of Thailand.

[1](#)2. (U) The financial market has taken the deal in stride and the Thai public appears not to care deeply despite opposition politicians, criticism, particularly of the tax exemption on the proceeds of the sale. The deal makes good business and political sense for the Prime Minister and his family, and indications are that it will likely hold in the absence of significant legal challenge even if some participants may be charged with wrongdoing. The Shin buyout also makes business sense for Temasek and its subsidiary Singapore Telecom, while at the same time reinforcing the Government of Singapore,s strategy of strengthening ties with Thailand. The Prime Minister,s exit from the telecom business removes a significant barrier to sectoral liberalization. The fact that the deal was structured to get around Thailand,s restrictions on foreign investment nevertheless raises serious questions about the investment climate in Thailand, and shows the limits of liberalization to date. The outcome to hope for going forward is that any domestic political debate about policy issues such as foreign ownership of telecom assets may put to rest some of the Thais fears of market liberalization, and by extension a Free Trade Agreement with the United States. End Summary.

## THE DEAL OF THE CENTURY

13. (U) After weeks of speculation, Temasek, the investment arm of the Government of Singapore, announced that it was acquiring the Prime Minister's family members, 49.6 percent stake in Shin (1.488 billion shares) in a cash purchase of 73.3 billion baht effective on the same day that an amendment to the Telecommunications Business Act (TBA) raising the cap on foreign ownership of Thai telecom companies from 25 percent to 49 percent went into effect. The Governor of the Bank of Thailand told the press earlier that the inflow of currency (almost 50 billion baht) to conclude the deal caused the Thai baht to appreciate. The Revenue Department determined that because the Prime Minister's son, daughter, sister, brother-in-law, and sister-in-law sold their shares as individuals (i.e., because it was not a company selling the shares), the proceeds of the sale would be exempt from income tax. The tender offer for the remaining shares of Shin, as required by Thai law, was set at 49.25 baht/share, the price paid for the Shinawatra family shares.

14. (U) Industry observers agree that the real object of the deal is the mobile operator AIS, in which Singapore Telecom (SingTel), already has a stake of about 20 percent. (Temasek owns a 60 percent stake in SingTel.) Had SingTel simply attempted to acquire AIS, however, it would have run afoul of even the revised TBA, which provides for an upper limit of 49 percent foreign ownership of a Thai telecom firm, and it would have triggered a tax event on the sale at a rate of 30 percent.

15. (U) In a carefully crafted transaction, worked out in consultation with tax-law expert Suvarn Valaisathien, Wichit Surapongchai, president of Siam Commercial Bank, and Shin Corp CEO Boonklee Plangsiri, Temasek acquired the Shinawatra family's stake in Shin through several holding companies

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newly established to effect the deal. As reported in the press and explained to the public, Temasek's 49 percent stake in the joint venture Kularb Kaew (meaning Rose) represents its point of entry in the deal, but the remaining 51 percent stake of that entity is nominally Thai investors participating in the deal. The major Thai investor in Kularb Kaew was lent his 20 billion baht capitalization contribution by Siam Commercial Bank with the Kularb Kaew shares as collateral. Kularb Kaew, in conjunction with Siam Commercial Bank, and a holding company named Cypress Holdings control another holding company, Cedar, which, together with still another holding company, Aspen, now owns the Shin shares purchased from the Shinawatra family members. A telecom analyst who has reviewed the relevant corporate filings at the Ministry of Commerce, however, explained that even this complex structure oversimplifies the architecture of the deal. Telenor's buyout of Total Access Communications and United Communications (REF A) is clearly the model for the transaction, but even that complex deal now appears simple by comparison.

16. (U) As a result of acquiring control of the holding company created by Thaksin and his wife Khunying Pojaman about 30 years ago to manage their many enterprises, Temasek now has effective control of AIS, broadcaster iTV Plc (52.94 percent), Shenington Investments Pte (100 percent), consumer finance firm Capital OK Co., Ltd. (60 percent), CS LoxInfo Plc, and several other firms. Temasek has also acquired a significant stake in Shin Satellite (41.34 percent), Lao Telecom (49 percent), and budget carrier Thai AirAsia (50 percent, jointly owned with Malaysia's AirAsia Berhad).

17. (U) Financial authorities have interpreted Thai law with considerable latitude in determining the tender offer required as part of the deal. Since ShinSat is less than 10 percent of Shin Corp's holdings, for example, a Securities Exchange Commission (SEC) panel ruled that a tender offer

would not be necessary. They similarly exempted iTV from the requirement to make a tender offer. The tender offer for outstanding AIS shares proposed by Shin Corp's financial advisor, based on conservative but justifiable assumptions, is 72.31 baht, or about 30 percent below the 100-104 baht range at which the company traded the previous week. Under Thai law, the financial advisor of other shareholders may comment but not change the terms of the offer. At such price, few takers are expected, thus reducing the cost to Temasek. Securities industry contacts have told the Embassy that they do not expect shareholder lawsuits.

#### MOTIVES

18. (U) Temasek appears to be acting out of both business and political concerns. On a strictly business level, the acquisition of AIS makes sense because of the existing relationship between AIS and SingTel, the relative saturation of the Singapore telecom market, and the platform for expansion that the Thai market affords. A former diplomat who now works in the securities industry told the Embassy that geopolitical concerns also loom large in Temasek's thinking. The deal certainly had the blessing of the Government of Singapore, and Temasek likes to buy high in Thailand. The government wants Singapore to be closer to Thailand to guard against Malaysia to the North and chaos in Indonesia to the South.<sup>8</sup> Since prior to this transaction Shin Corp typically traded at a 20 percent discount to NAV, Temasek likely paid a 20 percent premium by buying at NAV.

19. (U) The Prime Minister has focused on his desire to put to rest charges of conflict of interest. The stock transaction was not decided by Shin Corp,<sup>8</sup> he said, but by my children who want their father to devote his attention to serving the country.<sup>8</sup> (Note: when he became Prime Minister, Thaksin transferred his Shin shares to the five family members who sold their Shin shares in the Temasek deal. End note.) Few observers believe that Thaksin has put business completely aside, and the question remains, why now?

110. (U) There is a solid case to be made that the Temasek deal just makes good business sense for the Prime Minister's family, particularly in view of the limited number of

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potential buyers. AIS has succeeded beyond even Thaksin's wildest ambitions, and he has said privately that he is tired of the telecom business. According to one carefully researched estimate prepared by an analyst covering AIS, at the current share price the Prime Minister has made 100 times his initial investment. While most observers expect AIS to remain highly profitable, there is little doubt that the liberalization of the telecom services in progress, the extensive investment required to rollout third-generation (3G) services, and heightened competition are reshaping the telecom market. Selling makes sense, particularly if other opportunities present themselves, and few doubt Thaksin's ability to spot an opportunity.

111. (U) The most conspiratorial theory of the sale in circulation in Bangkok says that by cashing out now the Prime Minister Thaksin is purchasing a political insurance policy. Converting the family's telecom holdings into cash enables Thaksin to safeguard his fortune should his political career end in disgrace sooner rather than later. Dreams of a Bangkok-based movement to overthrow the Prime Minister's tyranny imposed on the country by rural voters may rest on the wishful thinking of a small minority, but there is no question that liquid assets are easier to move, and harder for the authorities to seize, particularly if located overseas.

#### REACTIONS

112. (U) The Embassy's telecom and finance contacts are

impressed by the execution of the Shin buyout. Everyone recognizes the talent that both sides drew upon in structuring and executing the deal. The SET closed up slightly on Tuesday, and down slightly on Wednesday, which suggests that the market is taking it in stride as a done deal.

¶13. (U) With the possible exception of tax issues, the Thai public is essentially indifferent to the Temasek deal. The headline &Prime Minister rids himself of political thorn and makes money too8 sums up the initial reaction. Although criticized daily in the Bangkok newspapers, Prime Minister Thaksin is much admired and highly popular nationally, in part because of his business acumen and resulting financial success. On the day the deal was officially announced he was leading a reality TV show in Roi-Et province highlighting his concern for the welfare of the poor. Although derided by political sophisticates in Thailand in the same way as in the United States, reality TV is highly popular in Thailand and the Prime Minister is better able than most politicians, especially the opposition, to turn it to political advantage. Thaksin has predictably derided criticism as envy: &I'm a big guy. How can I not be straightforward? I am not a nobody.8

¶14. (U) Some opposition lawmakers have predictably criticized various aspects of the Temasek deal, but such criticism of the sale itself does not appear to be gaining traction with a wider audience. Bangkok Senator Sopon Supapong, among others, has criticized the amendment to the TBA that raised the foreign investment cap from 25 to 49 percent as enabling the sale of precious national assets. Of particular concern in this regard are satellite broadcasting and television frequencies granted to Thai concessionaires. Opposition MP Korn Chatikavanij, a former investment banker, has questioned whether the Prime Minister,s family evaded paying income tax by structuring the deal as they did. Bangkok Senator Chirmsak Pinthong has likewise accused the Finance Ministry of adopting double standards to protect the Shinawatra family. The PM has pointed to the fact that there is no capital gains tax on transactions made by individuals on the Stock Exchange of Thailand.

¶15. (U) Significantly, the Opposition Democrat Party Leader Abhisit Vejjajiva has not made protest against the Temasek deal the focus of his public position. Abhisit has criticized Thaksin's mention of setting up a charity fund to alleviate poverty, saying that the Prime Minister would be better just to ensure that his family pays its share of taxes. The opposition can be expected to press on the theme of tax fairness, particularly since it is income tax season

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in Thailand. Fortuitously for the Prime Minister, however, the opposition is currently mired in a widening corruption scandal concerning bidding for Bangkok Metropolitan Administration (BMA) road construction projects. Abhisit is not involved, but his party is in charge of Bangkok, thereby undercutting their ability to take the moral high ground on issues of transparency and governance.

#### POSSIBLE CHALLENGES

¶16. (U) If the Temasek deal is to run into trouble, the most likely setting will be court, particularly the Supreme Administrative Court. Almost alone among independent institutions, the administrative court has served as a check on executive power, such as when it suspended the initial public offering of state-owned power producer EGAT Plc (REF B). In view of the various favorable determinations by regulators that facilitated the buyout, it is possible that a court challenge may emerge. The Law Society of Thailand and the Press Council of Thailand announced on January 26 that they are conducting a probe of the Shin buyout and said that income tax must be paid on the deal. The probe will focus on the legal aspects of the tax-free sale and the effects on

national security of selling national assets to foreigners. Other telecom companies have given no indication that they plan to challenge the deal in court.

¶17. (U) The challenges more likely to stick are those concerning individual conduct rather than the overall structure of the deal. The Stock Exchange of Thailand is investigating five brokerage houses for possible insider trading in connection with the deal. Journalists and lawmakers have focused on the ironically titled Ample Rich deal. The specific allegation is that Ample Rich Investment Co. Ltd., a company owned by Thaksin and registered in the British Virgin Islands, sold 329 million shares of Shin stock to Thaksin's children at 1 baht per share on January 20, which they then sold to Cedar Holdings and Aspen Holdings on January 23 at 49.25 baht per share. Whether these or other allegations are true, or will lead to further allegations against the Prime Minister himself, is unknown and will likely take considerable time to ascertain.

#### EFFECT ON THE TELECOM MARKET AND COMMENT

¶18. (U) In the immediate-term, the Temasek deal will not likely bring great change to the Thai telecom market. Yingluck Shinawatra, the Prime Minister's younger sister has resigned as President of AIS, but Temasek has pledged no change at Shin8 including, for example, the merging of SingTel and AIS. Indications are AIS will continue to go forward with its rollout of 3G services.

¶19. (U) Longer-term, the Prime Minister's exit from the telecom market removes a significant barrier to liberalization of the sector. A majority of the Thai mobile services industry is now controlled by foreign firms. True Corp, whose subsidiary TA Orange is the last major wholly-Thai owned operator in the mobile services market has seized on the deal as an opportunity to urge scrapping the existing telecom concessions, described in detail in REF C, so as to create a level playing field in the mobile market. While it is not clear that the National Telecommunications Commission (NTC) has the appetite to take on concession conversion, a matter on which the state-owned enterprises TOT Plc and CAT Telecom Plc may be expected to fight, there is little doubt that having AIS out of the Prime Minister's hands lightens the political pressure\*both real and perceived\*on the regulator. Since the NTC is inquiring into the effect of the Telenor deal on competition in the market, it may take up the same question with respect to the buyout of AIS.

¶20. (U) Comment: While the recent entry of foreign firms into the Thai telecom market may be welcome to foreign investors, the form by which it has occurred raises disturbing questions about the investment climate in Thailand. Both Temasek's buyout of Shin and Telenor's acquisition of TAC and UCOM were obviously structured to get around the intent, if not the letter of existing laws limiting foreign ownership of telecom companies. The fact

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that large foreign firms were able to blatantly get around the law at the invitation of leading Thai players suggests that the law is quite malleable when insiders want it to be, which raises the question of just how much protection the law really affords. Similarly, the requirement for foreign entities to establish such Byzantine legal structures to enter the Thai market underlines just how halting Thailand's commitment to liberalization really is. Many foreign companies simply don't want to deal with the uncertainty of Thai law which can be endlessly flexible or absolutely unbending depending on the precise circumstances and individuals involved.

¶21. (U) The Embassy agrees that the deal makes good business sense for the Prime Minister and his family, and that it will likely survive political criticism. The exceedingly

favorable timing and terms of the sale (such as the income tax exemption) nevertheless render it vulnerable to challenge, so it is unlikely to fade from the headlines any time soon. Although the policy-relevant debates such as that over the sale of so-called national assets (e.g., frequencies) to foreigners does not appear likely to have broad political appeal, they are of concern to many of the same political figures who are following closely developments relating to the Thai-US FTA. We think that it is good for this debate to be occurring independent of the FTA and without reference to the United States or American companies.

With the Prime Minister out of the telecom business and the Thai mobile phone market no worse off than before it was dominated by foreign firms, the prospects have improved for allaying Thai fears of market liberalization.

BOYCE